

Before the
Administrative Hearing Commission
State of Missouri



MIDWEST LEASING CO.,

Petitioner,

vs.

DIRECTOR OF REVENUE,

Respondent.

No. 12-1735 RV

DECISION

We deny Midwest Leasing Company's ("Midwest") motion for contempt and to stay its obligation to respond to discovery. We grant the Director of Revenue's ("the Director") motion for sanctions for Midwest's failure to comply with discovery rules, strike Midwest's pleadings, dismiss Midwest's complaint, and enter a decision in favor of the Director.

Procedure

Midwest filed its complaint on September 17, 2012. The complaint seeks to reverse a decision by the Director to deny Midwest a certificate of title to a 2005 Nissan motor vehicle ("the vehicle").

On March 18, 2013, we dismissed the case on our own motion based on our finding that the signature of the attorney then representing Midwest, Chad Hager, had been forged, as well as other irregularities in Midwest's filings. On April 17, 2013, Midwest, now represented by new counsel, filed a motion to set aside our decision, which we did on that day.

Midwest's Discovery Requests to the Director

Midwest mailed its second set of interrogatories (“the second interrogatories”) to the Director on July 15, 2013. The Director filed the motion to quash the second interrogatories and for a protective order on August 9, 2013, and Midwest filed its response on August 27, 2013. On August 29, 2013, we issued our order in which we denied the Director’s motion for protective order and ordered the Director to respond to Midwest’s interrogatories within 30 days from the date of that order.¹

On October 7, 2013, Midwest filed a motion asking us to hold the Director in contempt and to stay any of its otherwise required discovery responses until the Director responded adequately to Midwest’s second set of discovery requests. On the same day, the Director responded to the motion.²

The Director's Discovery Requests to Midwest

On June 19, 2013, the Director served a request for admissions, a request for production, and interrogatories on Midwest. On July 29, 2013, Midwest filed a motion for extension of time in which to respond to those requests. On July 30, 2013, we granted Midwest’s motion, and gave Midwest an additional 30 days in which to respond.

On September 12, 2013, the Director filed a motion to compel Midwest’s compliance with its discovery requests or, in the alternative, to impose sanctions. On September 13, 2013, we granted the motion to compel, and ordered Midwest to respond to the Director’s discovery requests by September 20, 2013.

On September 20, 2013, Midwest filed responses to the Director’s request for admissions, and filed a motion with us asking for additional time in which to respond to the

¹ Thirty days from August 29 was September 28, a Saturday. Therefore, the Director had to respond to Midwest’s interrogatories by Monday, September 30.

² Both parties’ October 7 filings pertain both to Midwest’s discovery requests to the Director and the Director’s discovery requests to Midwest.

Director's interrogatories and request for production. On the same day, the Director responded to Midwest's motion. On September 30, 2013, we denied Midwest's motion and ordered it to respond to the Director's discovery requests by October 7, 2013.³ On October 7, 2013, Midwest filed a response to the Director's motion for sanctions. On that day, the Director replied to Midwest's response.

Findings of Fact

1. Midwest was, at all relevant times, an unincorporated association that operates under a fictitious name for P E S I, which in turn operates under a fictitious name for Property Exchange & Sales, Inc.
2. On March 2, 2012, Midwest filed an "Application for Missouri Title and License" for the vehicle ("the application") with the Director's motor vehicle license office in Olivette, Missouri.
3. The application listed Midwest as the owner of the vehicle, and listed Midwest's address as 546 Maple Valley Drive, Farmington, MO 63640.
4. At all relevant times from the filing of the complaint in this case, Midwest's address was 200 W. First Street, Ste #194, Farmington, Missouri, 63640
5. The application showed the date of sale of the vehicle as February 27, 2012.
6. On August 20, 2012, the Director's Motor Vehicle Bureau sent Midwest written notice that the Director denied issuance of a certificate of title for the vehicle because "the application contains fraudulent information."

³ In Midwest's October 7 filing, Midwest's counsel claimed that he was unaware of our September 30 order because he had not received it, even though he had notified this Commission of his change of address. The case file reflects that we sent orders and other correspondence to counsel's address of P.O. Box 104552, Jefferson City, MO 65110 (the address shown on Midwest's filed papers since August 15) on August 16, August 29, September 13, and September 30.

7. The following papers, filed by Midwest in this case, were signed by a person purporting to sign on Midwest's behalf, but the identity of the person or that person's representative capacity as regards Midwest was never disclosed, and the signature was illegible:

- Verified complaint, filed September 17, 2012;⁴
- Petitioner's motion to shorten time for the filing of petitioner's motion for decision on the complaint without hearing and/or petitioner's motion for summary decision, filed September 19, 2012;
- Petitioner's motion to shorten time for the filing of respondent's answer (if any); Petitioner's motion to require all parties to fax all pleadings to the opposing party, filed September 19, 2012;
- Petitioner's motion to set aside the order of 10/1/12 for failure to provide Petitioner with Constitutional due process, to wit: any opportunity to reply, and thereafter, Petitioner's motion for entry of an order granting Petitioner seven (7) days to file a reply—and, thereafter, Petitioner's motion to disqualify Commissioner Sreenivasa Rao Dandamu because Petitioner cannot receive a fair and impartial hearing before said Commissioner, filed October 5, 2012;

8. The following papers, each bearing Hager's purported signature, a fax number that was the same as Midwest's, and Midwest's address of 200 West First Street, Suite 194, Farmington, Missouri, 63640, were filed with this Commission in this case:

- "Petitioner's Motion to Reconsider and Set Aside the Commissioner's Order Entered on October 11, 2012 Denying Petitioner's "Motion" Filed on October 5, 2012 Including: #1 Motion to Set Aside Order of 10/1/12 for Failure to Provide Petitioner with Due Process, #2 Motion Granting Petitioner Seven (7) Days to File a Reply, and # 3 Motion to Disqualify Commissioner Sreenivasa Rao Dandamu," (sic) filed October 15, 2012;
- "Petitioner's Affidavit in Response Along with Suggestions in Opposition to Respondent's Answer and Motion to Dismiss," and "Petitioner's Motion to Consider this Pleading as Petitioner's Motion for Determination on the Pleadings *without* a Hearing. *Alternatively*, Petitioner's Motion to Shorten Time for the Petitioner's Filing of a Motion for Determination on the Pleadings *without* Hearing and/or Petitioner's Motion to Shorten Time for the Petitioner's Filing of a Motion for Summary Decision," filed October 29, 2012;

⁴ This document also contained a notary's jurat. However, the jurat not only did not identify the person signing on Midwest's behalf, but someone had deliberately obscured the gender of the signer from the certificate.

- “Supplemental Additional Response to Petitioner’s Affidavit in Response Along with Suggestions in Opposition to Respondent’s Answer and Motion to Dismiss,” and “Petitioner’s Motion to Consider this Pleading as Petitioner’s Motion for Determination on the Pleadings *without* a Hearing. *Alternatively*, Petitioner’s Motion to Shorten Time for the Petitioner’s Filing of a Motion for Determination on the Pleadings *without* Hearing and/or Petitioner’s Motion to Shorten Time for the Petitioner’s Filing of a Motion for Summary Decision,” filed October 29, 2012;
- Petitioner’s Certification Re: Attorney Representation and Preliminary Suggestions in Opposition to Respondent’s Motion to Dismiss, filed October 29, 2012;
- Petitioner’s Attorney’s Contact Information, filed November 26, 2012;
- Memo to Clerk of A.H.C.,” filed December 3, 2012, asking this Commission to “[p]lease correct the information on the on-line docket sheet AND file in this case as reflected on the pleadings. It should read and reflect:

ATTORNEY FOR PETITIONER:

Midwest Leasing Co.

Att: C. Hager, Corporate Counsel

200 W. First Street, Ste #194

Farmington, Missouri 63640

(573) 303-0005

Thank you.”

- Petitioner’s Follow-Up Memo Re: Petitioner’s First Request for Admissions and Memo Certifying Original Prior Service on December 3, 2012, filed December 19, 2012;
- Petitioner’s First Request for Production Certification of Service, filed December 20, 2012;
- Petitioner’s Motion for Summary Decision or Alternatively, Petitioner’s Motion for Decision without Hearing on the Pleadings, filed January 9, 2013;
- A copy of “Petitioner’s First Request for Admissions” that were served by Midwest on the Director, filed January 9, 2013 along with the January 9 motion;
- A copy of “Petitioner’s First Request for Production,” attached to the Director’s January 10, 2013 Response;

- Petitioner’s Reply to Respondent’s Motion to Quash and Respondent’s Motion for Protective Order...and Motion to Deny Petitioner’s Motion for Summary Decision or Alternatively, Petitioner’s Motion for Decision without Hearing on the Pleadings, filed January 11, 2013;
- Hager’s notice that he was withdrawing as attorney for Midwest, filed January 22, 2013.

9. Hager did not sign any of these documents.

10. Hager’s genuine signature was affixed to the following document:

- “Former Petitioner’s attorney’s sworn affidavit to allow the substitution of pleadings personally signed by the undersigned officer of the Court and request to set aside, for good cause, the Commission’s March 18, 2013 dismissal,” filed as an attachment to Midwest’s April 17, 2013 motion to set aside dismissal.

Conclusions of Law

Supreme Court Rule 61.01(b)⁵ governs the imposition of sanctions for failure to answer interrogatories or failure to respond in accordance with the Court’s rules:

If a party fails to answer interrogatories or file objections thereto within the time provided by law, or if objections are filed thereto which are thereafter overruled and the interrogatories are not timely answered, the court may, upon motion and reasonable notice to other parties, make such orders in regard to the failure as are just and among others the following:

(1) An order striking pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or render a judgment by default against the disobedient party.

(2) Upon the showing of reasonable excuse, the court may grant the party failing to answer the interrogatories additional time to file answers but such order shall provide that if the party fails to answer the interrogatories within the additional time allowed, the pleadings of such party shall be stricken or the action be dismissed or that a default judgment shall be rendered against the disobedient party.

⁵ Section 536.073.2 authorizes this Commission to make rules adopting the Supreme Court’s discovery rules. We adopted those rules by 1 CSR 15-3.420(1). Statutory references are to RSMo 2000. All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

Such sanctions include an award of attorney's fees,⁶ costs,⁷ dismissal,⁸ default,⁹ and the striking of pleadings.¹⁰ Also, 1 CSR 15-3.425 provides:

- (1) The commission may impose a sanction on any party for conduct *including, without limitation*, such party's failure to:
 - (A) Comply with any order or rule of the commission, including failure to file an answer;
 - (B) Appear at any hearing; or
 - (C) Apprise the commission of a current mailing address.
- (2) Sanctions available under this rule:
 - (A) Striking all or any part of the party's pleading;
 - (B) Deeming all or any part of an opposing party's pleading admitted; or
 - (C) Barring or striking all or any evidence on any issue.
- (3) The commission shall determine whether to impose any sanction, and the appropriate degree of such sanction, based on the facts of each case.

(Emphasis added.) The effect of striking Midwest's pleadings is to dismiss its case.¹¹ Our authority to dismiss as a sanction derives from 1 CSR 15-3.436(1)(C), which provides:

The commission may order involuntary dismissal on its own motion. Grounds for involuntary dismissal include:

* * *

(C) Grounds for a sanction as set forth in rule 1 CSR 15-3.425.

Midwest's Discovery Requests to the Director

Midwest mailed its second interrogatories to the Director on July 15. The Director filed the motion to quash the second interrogatories and for a protective order on August 9, and Midwest filed its response on August 27. On August 29, we issued our order in which we denied the Director's motion for protective order and ordered the Director to respond to Midwest's interrogatories within 30 days from the date of that order.

⁶ *Stidham v. Stidham*, 136 S.W.3d 74, 83-84 (Mo. App., W.D. 2004).

⁷ *Fairbanks v. Weitzman*, 13 S.W.3d 313, 326 (Mo. App., E.D. 2000).

⁸ Sup. Ct. Rule 61.01(b)(1).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Jacobs v. Corley*, 793 S.W.2d 512, 515 (Mo. App., E.D. 1990).

On October 7, Midwest filed a motion asking us to hold the Director in contempt and to stay any of its otherwise required discovery responses until the Director has responded adequately to Midwest's second set of discovery requests. Midwest asks us to hold the Director in contempt for disobeying our August 29 order, but it misreads that order. While we ordered the Director to respond to Midwest's interrogatories, our order also provided: "[The Director] may avail himself of any of those objections to those interrogatories he deems appropriate and, if he so objects, may either answer the interrogatory subject to the objection or withhold his answer, as Supreme Court Rule 57.01(c)(3) allows him to do. In that instance, either party may move for a ruling on the objection."

A plain reading of that order refutes Midwest's position. The two examples of responses Midwest provided with its motion shows the Director raising attorney-client and attorney work product privileges, as well as relevance, as objections to the interrogatories. We cannot speak to the validity of the privilege objections, as Midwest skipped the step of moving for a ruling on the objections, but the one complete and one partial interrogatory Midwest provided certainly appear to be irrelevant, as they inquire about complaints made by Midwest concerning Steven Ahlers to the Department of Revenue (interrogatory number 3) and communications between Ahlers and someone named James Mead (interrogatory number 4). As we stated in our August 29 order:

We can state what the case appears to be about (whether Midwest is entitled to a certificate of title to the Vehicle), but can also state with assurance what it is *not* about—it is not about the alleged activities of employees of the Department of Revenue, except insofar as they affect Midwest's right to a certificate of title to the Vehicle.¹² We do not review the actions of the Department of Revenue, much less its employees' activities or motivations, because first, we do not affirm or reverse the Director's decision, but remake it,¹³ and second, we have no power to superintend the

¹² As we reminded Midwest in our order of August 29, it bore the burden of proving its right to the certificate of title. See § 621.050.2.

¹³ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

Director's procedures.¹⁴ These limitations appear to directly affect the relevance of many of Midwest's interrogatories, most of which concern the actions of specific Department employees.

The two interrogatories Midwest provided appear to exceed the scope of the case as we stated it (and which Midwest has never disagreed with)—whether Midwest is entitled to a certificate of title to the 2005 Nissan. A contempt action is a remedial one, coercive in nature, whose purpose is to enforce a remedy previously ordered.¹⁵ The Director has shown that he has complied with our August 29 order.

The Director asks us to deny Midwest's motion for contempt and stay as premature because Midwest failed to comply with 1 CSR 15-3.420(3), which requires a party filing a motion to sanction another party for a failure to respond or an inadequate response to certify that it has made reasonable efforts to contact the other party, and to inform us as to what steps have been taken to resolve the dispute informally. Midwest never complied with this regulation, but then the Director also failed to comply with this regulation in his September 12 and September 20 motions. In any case, we deny Midwest's motion for contempt and stay on the merits.

The Director's Discovery Requests to Midwest

Midwest, on the other hand, has not offered a credible reason for its failure to respond to the Director's interrogatories and request for production. Since its July 29 motion to extend its deadline for responding to the Director's discovery requests, it has claimed that the person who could provide the information needed for such responses has been out of the country. It repeated that claim on September 20, in a motion for yet more time to respond. This excuse, never supported by specifics such as who this person is, why he or she possesses the unique knowledge required to respond to the Director's discovery requests, or where he or she might be so as to be

¹⁴ *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985).

¹⁵ *Wood v. Wood*, 391 S.W.3d 41, 51 (Mo. App., W.D. 2012).

unreachable by telephone, videoconference, text message, e-mail, or fax for over three months, may have been plausible in July, but by October, it is no longer credible.

Revisiting Hager's Explanations in his Affidavit filed on April 17

Furthermore, this behavior is entirely consistent with Midwest's actions from the beginning of the case, which include deliberately obscuring who was signing papers on its behalf, claiming that its counsel was its "corporate counsel" and maintained an office at Midwest's office, and asserting that multiple signatures of that former counsel were made by counsel's also-anonymous "legal assistant." Seen in this light, Midwest's motion for contempt and a stay, which we deny on its merits, also looks like nothing more than an attempt to further delay having to comply with the Director's discovery requests.

Hager's affidavit¹⁶ provided explanations for the discrepancies we set out in our decision dismissing the case on March 18, 2013. He explained that the signatures on the documents that did not look like his signature were, in fact, not his signature. Instead, he explained, they were made by "a retired legal assistant" and, he asserted, he authorized this person to sign his name to the documents after he reviewed the documents. He explained that he only listed Midwest's Farmington address on papers filed with the Commission because his client wanted to be fully informed of all proceedings and filings, he was often out of town, and that Midwest had agreed to immediately send him all such papers it received to his St. Charles office, and would also provide a copy directly to the "legal assistant."¹⁷ He explained that this person signed the papers "C Hager" "[t]o insure that there was some designation that any pleading or communication received at Midwest was related to this case, I decided that just my first initial "C" would be

¹⁶ Hager affidavit, ¶ 9, attached to Midwest's motion to set aside our dismissal, filed April 17, 2013.

¹⁷ Hager affidavit ¶ 10.

utilized on all communications in this case instead of using my entire first name, ‘Chad.’”¹⁸ He explained that he adopted the title of “Corporate Counsel” for Midwest because it “might help his legal resume related to the growth of [his] law practice and [his] desire to attract other companies to [his] law practice.”¹⁹ Finally, in response to our raising the issue of someone striking out references to the gender of the person signing the verified complaint, Hager stated that “such, in my legal opinion, has no legal significance.” He added a footnote saying, “QUERY: What of a transgender person? Whether that person is a ‘she’ or a ‘he’ does not detract from the validity and enforceability of the executed document!”

We set aside the dismissal on April 17, 2013, because Midwest had engaged new counsel, not because Hager’s explanations vindicated him or his client. However, since we are dismissing Midwest’s case based on the totality of the behavior exhibited by Midwest throughout the case, we revisit Hager’s explanations, and find them incredible. As to the “legal assistant” explanation, we note that, as with the person who signed documents on Midwest’s behalf as well as the person who has been out of the country and unavailable to answer the Director’s discovery requests since at least August 2013, this “legal assistant” was never identified. Further, as to both that explanation and the explanations why his first name was signed only with “C” instead of “Chad,” and why he adopted the title “Corporate Counsel,” we find those explanations to be nonsense. Finally, his conclusory “legal opinion” that the act of striking out references to gender in a jurat “has no legal significance” utterly ignores what we find relevant about it—it betrays yet another attempt to hide the identity of the person signing the document. It is an issue that has come back to haunt Midwest by its insistence that the one person (who is also anonymous) who can answer the Director’s discovery requests is out of the country and therefore unavailable.

¹⁸ Hager affidavit ¶ 10.

¹⁹ Id. ¶ 12.

Summary

We cannot ignore the actions of the petitioner prior to our initial dismissal of this case, as we set out above. Based on the totality of the petitioner's actions, the only reasonable sanction is dismissal. We therefore deny Midwest's motion for contempt and stay, grant the Director's motion for sanctions, dismiss the case as such a sanction, enter our decision in favor of the Director, and cancel the hearing.

SO ORDERED on October 18, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner